

TAB 1



# City of Palmetto Agenda Item

**Meeting Date**

January 20, 2012

**Presenter:** Jeff Burton/Mark Barnebey

**Department:** CRA/CRA Attorney

## **Title: Assignment of Real Estate Contract between Bob Graham and Circle K**

### **Background:**

On November 21, 2011, Bob Graham and Circle K entered into a contract for Mr. Graham to purchase a parcel at 301 8<sup>th</sup> Avenue W, from Circle K Stores, Inc. for a total of \$400,000. This is a part of the property which has been discussed to be purchased by the CRA for a mixed use development and expansion of the boat ramp parking. The attached Assignment would assign the right of Mr. Graham to purchase the parcel to the CRA. Mr. Graham would be paid \$40,000 upon closing by the CRA. An amendment to the contract was executed at the request of the CRA and City Attorney to extend the due diligence period, delete confidentiality requirements and indemnification requirements of the original contract.

### **Discussion:**

The CRA would be stepping into the shoes of Mr. Graham for this contract. The terms of the contract between Mr. Graham and Circle K provide several potential issues for the CRA. The due diligence period is still short (January 31, 2012). This is a brownfield site and the CRA needs to be comfortable with the status of this issue. Title work, a survey, and the environmental analysis needs to be completed and analyzed. Title work is being paid for by Circle K, but the survey, environmental work and other closing costs will be responsibility of the CRA. Total cost to the CRA is expected to be approximately \$500,000.00. Funding for the purchase would come from a 2006 loan with Bank of America which had been partially paid down.

The purchase of this property is NOT contingent on a closing of the adjoining Cadence property which is also on this Agenda. However, the acquisition of both the Cadence property and the Circle K property have value to the CRA independent of each other.

**UPDATE ON EVENTS DISCUSSED IN DECEMBER 19, 2011 CRA MEETING; the CRA is still in the process of receiving due diligence materials and has until January 31, 2012 for its due diligence period. There are three document affecting title to the Circle K property that need to be brought to CRA's attention:**

- 1) Mineral Reservations by Shell Oil Co. Shell reserved its right to oil, gas and other minerals in the property, including the right to explore for and develop the property for that purpose, and the right to lease the property to others for those purposes.**
- 2) Deed restrictions and right of first refusal in favor of Motiva. The restrictions are a) never install a well, tank, pump or related equipment for storage of potable water on the property; and b) never improve or use the property for residential purposes. There is no time limitation on these restrictions. The right of first refusal expires in 2021 in favor of Motiva, with a 30 day review period. There is also a restriction set out in the contract that Circle K and Graham, that for 20 years, the property will not be used for the storage or sale of motor fuels.**
- 3) Access Agreement for the benefit of Motiva. This grants a temporary license to Motiva for access to the property for the purposes set out in the Asset Purchase Agreement between Circle K and Motiva, which purposes include tank removal/closure, remediation and related testing.**

**CRA has not yet seen the updated environmental information and are currently waiting for its receipt.**

**The survey has been completed and there appears to be a hiatus about 10 feet wide between the Cadence property and the Circle K property. After discussion with an underwriting attorney for Chicago Title (which is also insuring the Cadence parcel, through the Porges Hamlin law firm, attorneys for Mr. Graham, as agent) and Cadence Bank representative, it has been proposed that the adjoining owners enter into a boundary line agreement to agree that the boundary of the Cadence Bank property as shown on the survey (which is the boundary of an old platted subdivision lot) is the common boundary line between the two parcels. This would effectively result in the Circle K parcel being expanded to the west by about 10'. Circle K would be willing to execute the Boundary Line Agreement, provided it is recorded at Closing. If Closing does not take place with the CRA, Circle K would not be willing to sign nor record the Boundary Line Agreement. Such a boundary line agreement would resolve any potential future title objection, so it would benefit both owners, as well as the City as potential ultimate**

purchaser, to resolve the matter in this way.

Subject to the results of the environmental report, the Mayor and Jeff Burton have reviewed these issues and believe it is in the best interest of the CRA to continue moving forward with the purchase of the property.

**Budgeted Amount:**  **Budget Page No(s):**  **Available Amount:**  **Expenditure Amount:**

**Additional Budgetary Information:**

**Funding Source(s):**  **Sufficient Funds Available:**  Yes  No **Budget Amendment Required:**  Yes  No **Source:**

**City Attorney Reviewed:**  Yes  No  N/A **Advisory Board Recommendation:**  For  Against  N/A **Consistent With:**  Yes  No  N/A

**Potential Motion/ Direction Requested:**

**Staff Contact:**

**Attachments:**